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& Trading, Five Seas Shipping Co., LLC,*
and Al-Buhaira National Insurance Co.

FILED

DISTRICT COURT OF GUAM

APR 30 2007

MARY L.M. MORAN
CLERK OF COURT

IN THE DISTRICT COURT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARWAN SHIPPING & TRADING CO., *et
al.*,

Defendants

AND CROSS-CLAIMS, COUNTERCLAIMS,
THIRD-PARTY COMPLAINT, AND CLAIM
IN INTERVENTION.

NO. CIV06-00011

**OPPOSITION TO S.J. GARGRAVE'S
MOTION TO NOT CONSIDER
DECLARATION**

Complaint Date: April 19, 2006
Trial Date: Not set

Defendant, S.J. Gargrave Syndicate 2724 ("Gargrave") has blatantly misstated Local Rule 7.1(g) to the Court in support of its motion for this Court not to consider the Declaration filed herein on April 6, 2007. Gargrave argues that 7.1(g) reads as follows:

Each party may submit briefs or memoranda in support of or in opposition to any pending motion...without leave of court....The moving party may submit a reply brief or memoranda...without leave of court,

for the proposition that Defendants Marwan Shipping & Trading, Five Seas Shipping Co., LLC,

**OPPOSITION TO S.J. GARGRAVE'S MOTION TO NOT
CONSIDER DECLARATION**

CAUSE NO. CIV06-00011 - 1

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ORIGINAL

1 and Al-Buhaira National Insurance Co. (collectively "Marwan") are not entitled to file their
2 Declaration, but Gargrave misstates and misapplies Local Rule 7.1(g), because as shown below,
3 the topic of 7.1(g) has only to do with the length of briefs and memoranda. Indeed, that is the
4 heading for 7.1(g). It reads in *toto* as follows:

5
6 **(g) Length of Briefs and Memoranda.** Each party may submit briefs or
7 memoranda in support of or in opposition to any pending motion which shall not
8 exceed a total of twenty (20) pages in length without leave of Court to file
9 additional pages. The moving party may submit a reply brief or memoranda not
in excess of ten (10) pages without leave of Court. All briefs and memoranda in
excess of fifteen (15) pages shall contain a table of authorities cited.

10 It is clear from reading that Rule that the only time when one needs to obtain "leave of
11 Court" under 7.1(g) is when your "memoranda" exceeds twenty (20) pages or ten (10) pages, as
12 the case may be.

13 In any event, the pleadings filed by Jed Powell is not a brief, but is a Declaration with an
14 attachment from depositions that were taken in London *after* the Motion to Dismiss was filed.

15 The issue before the Court now is not covered by L.R. 7.1(g) but is covered by L.R.
16 7.1(d)(1)(A):

17
18 (A) If a motion is set for oral argument, the opposing party shall not less than
19 (14) days preceding the noticed date of oral argument, serve upon all parties and
file with the Clerk:

- 20 (i) a memorandum in support thereof containing the points and
21 authorities upon which the opposing party relies;
22 (ii) if desired, the evidence upon which the opposing party relies;
23 (iii) any affidavits permitted by the Federal Rules of Civil Procedure.

24
25 Do the Federal Rules of Civil Procedure permit the filing of the Jed Powell Declaration?
26 Yes.

1 Rule 12 F.R.C.P. specifically provides that in a motion to dismiss, if matters outside the
2 pleadings are presented (and they are – please see the matters submitted with the motion), then the
3 parties shall be given reasonable opportunity to present all materials made pertinent to such a
4 motion by Rule 56.
5

6 ...If, on a motion asserting the defense numbered (6) to dismiss for failure
7 of the pleading to state a claim upon which relief can be granted, matters
8 outside the pleading are presented to and not excluded by the court, the
9 motion shall be treated as one for summary judgment and disposed of as
provided in Rule 56, and all parties shall be given reasonable opportunity
to present all material made pertinent to such a motion by Rule 56.

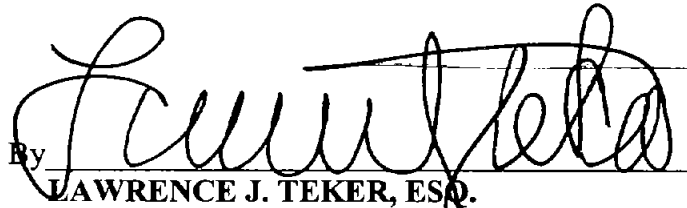
10 Rule 56, F.R.C.P. specifically provides that “The adverse party prior to the day of hearing
11 may serve opposing affidavits.”

12 **CONCLUSION**

13 Because Marwan’s Declaration complies both with the Local Rules and the Federal Rules
14 of Civil Procedure, Marwan hereby respectfully requests the Court to deny Gargrave’s motion.
15

16 Respectfully submitted this 30th day of April, 2007.

17 **TEKER TORRES & TEKER, P.C.**

18 
19 By LAWRENCE J. TEKER, ESO.

20 Attorneys for Defendants, *Marwan Shipping &*
21 *Trading Co., Sharjah, Five Seas Shipping Co.,*
22 *LLC, Sharjah, & Al Buhaira National Ins. Co.*
23
24
25
26

CERTIFICATE OF SERVICE

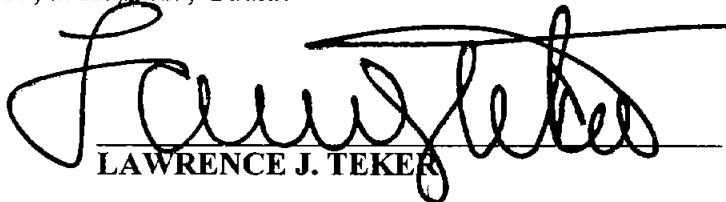
The undersigned certifies under the penalty of perjury according to the laws of the United States that on this date I caused to be served in the manner noted below a copy of this document entitled **OPPOSITION TO S.J. GARGRAVE'S MOTION TO NOT CONSIDER DECLARATION** on the following individuals:

R. Michael Underhill, Esq. Mimi Moon, Esq. Torts Branch, Civil Division US Department of Justice 450 Golden Gate Avenue, Room 7-5395 PO Box 36028 San Francisco, CA 94102-3463 Facsimile No.: (415) 436-6632	Forrest Booth, Esq. Ryan Donlon, Esq. Severson & Werson One Embarcadero Center, 26 th Floor San Francisco, CA 94111 Facsimile No.: (415) 956-0439
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☒ Via Messenger

☒ Via Facsimile

DATED this 30th day of April, 2007, at Hagåtña, Guam.


LAWRENCE J. TEKER

**OPPOSITION TO S.J. GARGRAVE'S MOTION TO NOT
CONSIDER DECLARATION**

CAUSE NO. CIV06-00011 - 4

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